

OCT 18 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****RANDY LEE HAUSE,****Defendant - Appellant.****No. 04-36165****D.C. Nos. CV-04-00161-DWM
CR-00-00044-DWM****MEMORANDUM***

**Appeal from the United States District Court
for the District of Montana
Donald Molloy, District Judge, Presiding**

Submitted October 11, 2005**

Before: T.G. NELSON, WARDLAW and TALLMAN, Circuit Judges.

Federal prisoner Randy Lee Hause appeals pro se the district court's denial of his 28 U.S.C. § 2255 motion to vacate or correct his sentence for being a felon in possession of a firearm. Under *United States v. Booker*, 125 S. Ct. 738 (2005),

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

and *Blakely v. Washington*, 542 U.S. 296 (2004), Hause contends that the district court erred in enhancing his sentence based on judge-found facts. Hause's conviction was final as of the dates the *Booker* and *Blakely* decisions were issued. Hause's claim is foreclosed because, as we recently held, "*Booker* does not apply retroactively to convictions that became final prior to its publication." *United States v. Cruz*, No. 03-35873, 2005 WL 2243113, at *1 (9th Cir. Sept. 16, 2005). *See also, Schardt v. Payne*, 414 F.3d 1025, 1036 (9th Cir. 2005) (holding in a 28 U.S.C. § 2254 habeas action that *Blakely* does not apply retroactively to cases on collateral review). Consequently, we affirm the district court.

AFFIRMED.